



H. Lutzker

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT(S): Robert Lutzker

SERIAL NO.: 09/835,861

FILED: 04/16/2001

FOR: APPARATUS AND METHOD FOR IMPROVING THE TASTE
OF WINES

RULE 37 C.F.R. 1.131 DECLARATION

Hon. Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

March 08, 2006

As the above named inventor I declare that:

1. I make this declaration on my personal knowledge and upon information and belief.
2. I am the inventor of the above identified application. All of the work on the above invention shown in the attached exhibits was performed in the United States.
3. I understand that the examiner contends that claims 37, 38, and 42 of the present application are anticipated by Pieffer (US 6,287,614) under 35 U.S.C. 102(e). I also understand that claims 37, 42, 23-29, and 46 have been rejected in view of the combination of Pieffer and the U.S. Patent to Yu (6,390,319 which issued after the filing date of the present application.

4. I understand Pieffer claims benefit of the provisional application filing date of December 14, 1998.
5. Yu was filed on November 30, 1999 and claims priority on a provisional application filed November 30, 1998.
6. For the reasons set forth below the invention of the above identified application by me antedates the filing date of the patent taught by Pieffer and the patent by Yu.
7. Pursuant to 37 C.F.R. 1.131 I submit the attached evidence to support the position that the invention of the above identified application was made in the United States prior to the December 14, 1998 filing date of Pieffer and the November 30, 1998 filing date of Yu.
8. The applicant submits three documents to demonstrate that the present invention antedates the filing dates of Pieffer and Yu.
9. The exhibits are copies of three pages from my notebook, labeled page 4, page 5 and page 8. Each page discloses the present invention and is dated before the earliest filing dates of the patents taught by Pieffer and Yu and thus Pieffer and Yu should be withdrawn as references.
10. The documents attached hereto as pages 4, 5 and 8 are each dated prior to the December 14, 1998 filing date of Pieffer and the November 30, 1998 filing date of Yu.
11. The pertinent claim language of the present invention is as follows:

I claim:

23. An apparatus for improving the taste of a beverage in a container said container having a top and a bottom, said beverage containing a polar molecule, said apparatus having a base for the bottom of said container, said base comprising a first magnet that applies a magnetic force to the beverage at the bottom of the container and a second magnet that applies a magnetic force to the beverage at the top of the container said second magnet being contained in a stopper at least a portion of said stopper being adopted to be received by an orifice in the top of said container.

28. The apparatus according to claim 27 wherein said first magnet is a ring magnet.

30. The apparatus according to claim 29 wherein said stopper comprises a top member and a plug member extending therefrom, said plug member being shaped to be inserted into the orifice of the container.

31. The apparatus according to claim 30 wherein the plug has a neck where said plug member is connected to said top member and a tip on said plug opposite said neck, said plug member being narrower in cross-section at said tip than at the neck

12. Support for the claims of the present invention can be found in the exhibits submitted by the applicant. Support can be found for claim twenty three in the exhibit marked page 4. Page 4 clearly shows a container with a top and bottom, which contains a beverage (page 4 line 7), placed atop the apparatus claimed by the present invention (page 4 line 12). The apparatus described in page four comprises a magnet with a first and second surface, said first surface being adjacent to the bottom of the container. Evidence of the positive effect of placing a beverage in a container on the present invention can be found on page 4 line 15.

The positive effect of the apparatus, namely the improvement of the taste of the beverage, is noted on line 15. Page 8 clearly shows a magnetic cork, wherein a portion of the magnetic cork is adopted to fit inside an orifice located on the top of the container (page 8 line 4 and 5)

13. Thus the exhibits marked pages 4 and 8 evince the applicant's reduction to practice of claim twenty three for "An apparatus for improving the taste of a beverage in a container said container having a top and a bottom, said beverage containing a polar molecule, said apparatus having a base for the bottom of said container, said base comprising a first magnet that applies a magnetic force to the beverage at the bottom of the container and a second magnet that applies a magnetic force to the beverage at the top of the container said second magnet being contained in a stopper at least a portion of said stopper being adopted to be received by an orifice in the top of said container." Pages 4 and 8 fully describes an apparatus to improve the taste of a beverage, which comprises placing a container of a beverage on a magnet and describes the positive effects of said apparatus, therefore claim twenty three of the present invention antedate the patent taught by Pieffer.
14. Support for claim twenty eight can be found in the exhibit marked page 8. Page 8 clearly shows the device described in claim twenty eight, namely a magnet shaped

like a ring (page 8 lines 7 and 8).

15. Thus the exhibit marked page 8 evinces the applicant's reduction to practice of claims twenty eight "said first magnet is a ring magnet. . Page 8 fully describes the positive effects of using a ring magnet at the bottom of the container, , therefore claim twenty eight of the present invention antedate the patent taught by Pieffer.
16. Support for claims thirty and thirty one can be found in the exhibit marked page 8 with the addition of a means for applying a magnetic field to the top of the container. The means for applying a magnetic field to the top of the container described in the exhibit is a magnetic cork (page 8 line 3). The increased positive effects of the addition of a means for applying a magnetic field to the top of the container which contains wine is noted on line 4 which reads in part "This is the ideal combination for treating wine." Page 8 fully describes the positive effects of adding a means for applying a magnetic field to the top of the container of a beverage and therefore claims thirty and thirty one antedate the patent taught by Pieffer.
17. Further supporting applicant's prior inventor are copies of receipts dated prior to December 14, 1998 and prior to November 30, 1998 for the purchase of magnets used to make the claimed invention.
18. For the foregoing reasons the applicant asserts that Pieffer and Yu do not

anticipate the present invention under U.S.C. 102(e) because the patents by Pieffer and Yu are antedated by the present invention.

All statements made herein of my own knowledge are true, all statements made herein on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and may jeopardize the validity of the application or any patent issuing thereon.

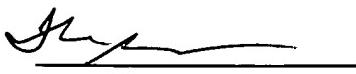
Respectfully submitted,



Robert Lutzker

CERTIFICATE OF MAILING

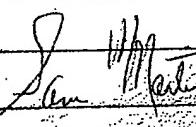
I hereby certify that the foregoing Affidavit was mailed by first class mail, postage prepaid, in an envelope addressed to the Hon. Commissioner of Patents, P.O. Box 1450 Alexandria, VA 22313, this 14th day of March, 2006.


Thomas A. O'Rourke

MEMOGENDA.

PAGE 8

X = Completed T = Transferred O = Abandoned

REF	ITEM—ONE LINE TO EACH	Robert S. Sutphen	DUÉ	X T O	DATE
1	Magnetic "Aging" of Wine				1/13/1977
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18	Wines tested, Ruffino Chianti and La Crema Pinot				
19	Nor. Best reduction in tannin aggression and best				
20	overall reduction in the taste of movement and				
21	significant and prolonged.				
22					
23	Dated and witnessed by:				
24					
25					
26	 Tom Sutphen	 Jim Mattox			
27					
28	BEST AVAIL				
29					
30	BEST AVAIL				
31					

BEST AVAIL

MEMOGENDA.

PAGE-5

X = Completed T = Transferred Q = Abandoned

REF	ITEM—ONE LINE TO EACH	Robert S Lutzler	DUE	X T O	DATE
1	The Magnetic effect upon Wine				5/17/78
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23	Drafted by the following witnesses				
24					
25	<u>Robert S Lutzler</u>	<u>Sam Martin</u>			
26					
27					
28					
29					
30					
31					

DATE

INVOICE #
M432

MAGNAWORKS TECHNOLOGY, INC.
 600 JOHNSON AVE., SUITE D6 BOHEMIA, NEW YORK 11716
 TEL: 516-218-3431 FAX: 516-218-3432

BILL TO:

L K Manufacturing Corp.
 P.O. Box 167
 Huntington Station, NY 11746

SHIP TO:

L K Manufacturing Corp.
 56 Eads Street
 West Babylon, NY 11704

P.O. NUMBER	TERMS	REP	SHIP	VIA	F.O.B.	PROJECT
Samples	Net 30		[REDACTED]	Cust. P/U	Bohemia, NY	
QUANTITY	ITEM CODE	DESCRIPTION			PRICE EACH	AMOUNT
2	RB-80	Magnetic cup assembly type RB-80 Zinc-plated				
8	500X125	Ceramic Magnet Size: OD 0.515" x 0.125" thick magnetized through the thickness.				
4	768X236X108C	Ferrite C 1 magnet magnetized through the diameter Size: 0.768" x 0.236" ID x 0.108" thick.				
6	1.00X125C8	Ceramic magnet disk grade C 8 Size: 1.00" x 0.125" thick Magnetized				
6	1.00X187C8	Ceramic magnet disk grade C 8 Size: 1.00" x 0.187" thick Magnetized				
6	3.368X1.25x.4	Ceramic magnet ring Size: 3.368" x 1.25" x .495" thick magnetized through the thickness.				
		SAMPLES				
Please let me know how they test out.						

BEST AVAILABLE

Tab stop ↓ for address

Adams

2 PART

carbonless
FORM NO. 2873

SNAP-A-GRAM

FROM:

MAGNAWORKS, TECH. INC.
 600 JOHNSON AVE. SUITE 16
 BOHEMIA, NY 11716

DATE:

TO:

LK MANUFACTURING CO.

ATTENTION OF:

Mr. Bob Lutzeer

SUBJECT:

MAGNET SAMPLES

Bob,

Enclosed you will find final Coromne
 Magnet Rings for your projects as
 follows:

- 1) 1.250" O.D. x .375" ID x .182" thick - 6 pieces
- 2) 2.375" O.D. x 1" ID x .280" thick - 6 pieces
- 3) 2.840" O.D. x 1.195" ID x .350" thick - 6 pieces

In addition I am enclosing a few pieces of Coromne
 disc magnets .472" dia x .120" thick

Let me know if they will be useful.

SIGNED

DATE

Snap-A-Gram

SNAP-A-GRAM

FROM:

MAGNAWORKS Tech., Inc.

DATE:

TO:

PK Mg.

ATTENTION OF:

E. E. LUTZKE

SUBJECT:

SAMPLES

VARIOUS SAMPLES of CERAMIC MAGNETS

4 pieces - 3.875" OD x 1950" ID x .500" thick

4 pieces - 2.500" OD x 1.00" ID x .250" thick

6 pieces - 1" OD x .250" thick

6 pieces - 5/4" OD x 7/8" ID

6 pieces - 5/8" OD x 3/4" ID

HARD DISK MAGNET FOR BOR

LUTZKE R P/C.

SIGNED

DATE

Snap-A-Gram

INVOICE

DATE

INVOICE #
M467**MAGNAWORKS TECHNOLOGY, INC.**

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 TEL: 516-218-3431 FAX: 516-218-3432

BILL TO:
L K Manufacturing Corp.
 P.O. Box 167
 Huntington Station, NY 11746

SHIP TO:
L K Manufacturing Corp.
 56 Eads Street
 West Babylon, NY 11704

P.O. NUMBER	TERMS	REP	SHIP	VIA	F.O.B.	PROJECT			
Samples			[REDACTED]	Cust. P/U	Boehmia, NY				
QUANTITY	ITEM CODE	DESCRIPTION			PRICE EACH	AMOUNT			
4	3.368X1.25x.4	Ceramic magnet ring Size: 3.400" x 1.25" x .375" thick magnetized through the thickness. SOUTH- POLE MARKED			0.00	0.00			
3	3350128850C8	Ceramic Ring Magnet Size: 3.350" OD x 1.280" ID x 0.845" thick 2- pcs glued together at 0.420" thick and magnetized			0.00	0.00			
6	1.145X1.59X19..	Ceramic magnet Size: 1.145" x 0.590" x 0.195" thick magnetized through the thickness 0.195' dimension.			0.00	0.00			
3	2X1X1C8	Ceramic8 Size: 2" x 1" x 1" thick Magnetized through the 1" dimension.			0.00	0.00			
6	875X1.87C8	Ceramic magnet disk grade C 8. Size: 0.875" x 0.187"+/- .005 thick Magnetized with 2-Pole on each side.			0.00	0.00			
Please let me know how they test out.					\$0.00				
					TOTAL				

PACKING LIST



MAGNAWORKS TECHNOLOGY, INC.

600 JOHNSON AVE., SUITE D6 BOHEMIA, NEW YORK 11716
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DATE

INVOICE #
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L K Manufacturing Corp.
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Huntington Station, NY 11746

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56 Eads Street
West Babylon, NY 11704

P.O. NUMBER	TERMS	REP	SHIP.	VIA	F.O.B.	PROJECT
Samples				Cust. P/U	Boehmia, NY	
QUANTITY	ITEM CODE	DESCRIPTION			PRICE EACH	AMOUNT
4	3.368X1.25x.4	Ceramic magnet ring Size: 3.400" x 1.25" x .375" thick magnetized through the thickness. SOUTH- POLE MARKED				
3	3350128850C8	Ceramic Ring Magnet Size: 3.350" x 1.280" ID x 0.845" thick 2- pcs glued together at 0.420" thick and magnetized				
6	1145X59X19..	Ceramic magnet Size: 1.145" x 0.590" x 0.195" thick magnetized through the thickness 0.195" dimension.				
3	2X1X1C8	Ceramic8 Size: 2" x 1" x 1" thick Magnetized through the 1" dimension.				
6	875X187C8	Ceramic magnet disk grade C 8 Size: 0.875" x 0.187"+-.005 thick Magnetized with 2-Pole on each side.				

Please let me know how they test out:

INVOICE

DATE

INVOICE #
M483MAGNAWORKS TECHNOLOGY, INC.

600 JOHNSON AVE., SUITE D6 BOHEMIA, NEW YORK 11716
 TEL: 516-218-3431 FAX: 516-218-3432

BILL TO:

L K Manufacturing Corp.
 P.O. Box 167
 Huntington Station, NY 11746

SHIP TO:

L K Manufacturing Corp.
 56 Eads Street
 West Babylon, NY 11704

P.O. NUMBER	TERMS	REP	SHIP	VIA	F.O.B.	PROJECT			
Samples				Cust. P/U	Bohemia, NY				
QUANTITY	ITEM CODE	DESCRIPTION			PRICE EACH	AMOUNT			
2	28301260330...	Ceramic Magnet Ring Grade C 8 Size" 2.830" OD x 1.260" ID x 0.330" thick Magnetized through the thickness			0.00	0.00			
2	2350940280C8	Ceramic Magnet Ring grade C 8 Size: 2.350" OD x 0.940" ID x 0.280" thick Magnetized through the thickness .280" dim.			0.00	0.00			
2	1760870230C8	Ceramic ring magnet grade C 8 Size" 1.760" OD x 0.870" ID x 0.230" thick Magnetized thru the thickness			0.00	0.00			
8	500X25C8	Ferrite disk grade C 8 Size: 0.500" x 0.25" thick Magnetized through the thickness			0.00	0.00			
8	472X197C8	Ceramic magnets C 8 grade. Size: 0.472" x 0.197" thick supplied magnetized.			0.00	0.00			
It's been a pleasure working with you!						50.00			
					TOTAL				

PACKING LIST



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600 JOHNSON AVE., SUITE D6 BOHEMIA, NEW YORK 11716
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West Babylon, NY 11704**

P.O. NUMBER	TERMS	REP	SHIP	VIA	F.O.B.	PROJECT
Samples				Cust. P/L	Bohemia, NY	
QUANTITY	ITEM CODE	DESCRIPTION			PRICE EACH	AMOUNT
2	28301260330...	Ceramic Magnet Ring Grade C 8 Size" 2.830" OD x 1.260" ID x 0.330" thick Magnetized through the thickness				
2	2350940280C8	Ceramic Magnet Ring grade C 8 Size: 2.350" OD x 0.940" ID x 0.280" thick Magnetized through the thickness .280" dim.				
2	1760870230C8	Ceramic ring magnet grade C 8 Size" 1.760" OD x 0.870" ID x 0.230" thick Magnetized thru the thickness				
8	500X25C8	Ferrite disk grade C 8 Size: 0.500" x 0.25" thick Magnetized through the thickness				
8	472X197C8	Ceramic magnets C 8 grade. Size: 0.472" x 0.197" thick supplied magnetized.				

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